

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP, Development Services Director / (954) 797-1101
Prepared by Deborah Ross, AICP, Planner III

SUBJECT: Resolution
Waiver to the Broward County Trafficways Plan for the 40-foot right-of-way dedication for a parcel located at the northeast corner of University Drive and Orange Drive.

AFFECTED DISTRICT: District 2

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA IN SUPPORT OF A WAIVER TO THE BROWARD COUNTY TRAFFICWAYS PLAN; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF:

A recommendation by the local government regarding a waiver of the Broward County Trafficways Plan right-of-way dedication requirements for a roadway within its municipal boundaries is required by the Documentation of the Broward County Trafficways Plan. Please note a waiver is a “parcel specific” application.

Pursuant to said requirements, Rod Feiner, on behalf of BP, is requesting a waiver to the 40-foot right-of-way dedication for University Drive for a parcel located at the northeast corner of University Drive and Orange Drive. BP is seeking to replat the University Amoco Plat (Plat Book 148, Page 8) to encompass previously unplatted property. The dedication of the 40-foot right-of-way was requested by the Broward County Engineering Division through the County’s platting process.

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT: None

RECOMMENDATION: Staff finds the subject request complete and suitable for transmittal to Town Council for further consideration.

Attachment(s): Exhibit A

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA IN SUPPORT OF A
WAIVER TO THE BROWARD COUNTY TRAFFICWAYS PLAN; AND
PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, University Drive is designated a 200-foot arterial by the Broward
County Trafficways Plan; and

WHEREAS, the University Amoco Replat located at the northeast corner of
University Drive and Orange Drive received a Broward County Preliminary
Development Review Report containing a staff recommendation regarding dedication of
40 feet of right-of-way on University Drive to comply with the Broward County
Trafficways Plan ; and

WHEREAS, the applicant requested a recommendation from the Town regarding
a 40-foot waiver to the Broward County Trafficways Plan; and

WHEREAS, the Town Council considered the waiver to the Trafficways Plan and
supports the 40-foot waiver to the Broward County Trafficways Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie supports a waiver to the
Broward County Trafficways Plan for a 40-foot right-of-way dedication requirement for
University Drive for the University Amoco Replat located at the northeast corner of
University Drive and Orange Drive.

SECTION 2. This Resolution shall take effect immediately upon its passage and
adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2002.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2002.

REQUEST AND JUSTIFICATION FOR TRAFFICWAYS WAIVER

Request

The applicant, BP Products North America, Inc. (BP), is requesting a waiver from the requirement to dedicate an additional 40 foot of right-of-way on University Drive in accordance with the Broward County Trafficways Plan requirement for a 200 foot right-of-way.

The University Amoco Replat consists of the original University Amoco Plat recorded in Plat Book 148, Page 8 of the Public Records of Broward County, plus an adjacent unplatted parcel of land 14,500 square feet in size. There is an existing gas station, small convenience store and car wash with a total of 4,560 square feet of commercial uses as calculated by Broward County requirements. The proposed development consists of 8,015 square feet of commercial uses which includes, as required by Broward County land development regulations, the area under the fuel pump canopy.

Justification

The University Amoco Replat has received a Preliminary Development Review Report which contains a Staff Recommendation to dedicate a 40 feet of right-of-way on University Drive to comply with the Broward County Trafficways Plan 200 foot arterial for this roadway. A copy of the Preliminary Plat and the Preliminary Development Report is attached. The Preliminary Development Review Report also requested that BP dedicate a corner chord at the intersection of University Drive and Orange Drive and further dedicate (and construct) land necessary for a bus pullout bay on University Drive north of the intersection on Orange Drive. It appears that there already exists 40 feet of dedicated right-of-way on University Drive which is not being utilized. BP thus believes that the 200 foot right-of-way requirement is excessive and unnecessary and that there is very little probability that this dedication will ever be needed to accommodate any expansion of University Drive, including any addition of a Bus Rapid Transit (BRT) route.

The 200 foot right-of-way corridor, as explained to me by County Engineering, provides for the construction of a frontage road system, which is no longer contemplated. In addition, Broward County is now considering a BRT route for University Drive. However, the implementation of this concept has not yet been approved by the County Commission, though it is listed in the Broward County Long Range Transportation Plan. It is BP's opinion that, when the existing right-of-way is contemplated, there is already sufficient dedicated roadway to accommodate the BRT concept. In addition, BP is willing to dedicate the 15 foot corner chord and the land necessary to install a bus bay. This proposed dedication is more consistent with the rational nexus/rough proportionality analysis required for right-of-way exactions. This is especially the case since the Preliminary Development Report indicates that the proposed use of the Plat, as indicated by the proposed plat note, satisfies the regional road concurrency requirements.

Rough Proportionality and Rational Basis Test:

The Broward County Trafficways Plan establishes a right of way corridor map and the Broward County Land Development Code provides that applicants for plat approval must dedicate right of way within their plat property to provide the right of way necessary to establish the trafficways corridor. This requirement, however, is subject to the constitutional limitations of the Fifth Amendment to the United States Constitution as articulated by the Federal and State Courts. The clearly established law on required dedications is that there must be a reasonable connection shown by the agency requiring the dedication between the type and scope of the dedication and the impacts of the proposed development. In this case, the County would have to provide an analysis that the ADDITIONAL vehicle trips generated by the proposed development would necessitate the improvement of the roadway in the very near future and that improvement would require the right of way dedication. In this case, that finding cannot be made for two reasons: (1) there are no plans to widen University Drive in such a manner to require an additional 40 foot dedication, and (2) the impact of the proposed University Amoco Replat (the additional trips over and above the existing development) would not result in the need for any improvement to University Drive.

For many years the constitutional test for forced dedications was the “rational nexus” test. This test was articulated by the Second District of Appeals in Lee County v. New Testament Baptist Church of Fort Myers, Florida, Inc., 507 So.2d 626 (Fla. 2nd DCA 1987) as follows:

In short, for the nexus test to apply, thus making a compulsory dedication constitutionally valid, the nexus must be rational. This means it must be substantial, demonstrably clear and present. It must definitely appear that the proposed action by the developer will either forthwith or in the demonstrably immediate future so burden the abutting, through increased traffic or otherwise, as to require its accelerated improvement. Such dedication must be for specific and presently contemplated immediate improvements - not for the purpose of “banking” the land for use in a projected but unscheduled possible future use.¹

The constitutional test is now called the “rough proportionality” test, but the basics of the test are the same.² For a forced dedication to be valid the agency must make an individualized determination that there exists a “rough proportionality” between the dedication and the nature and extent of the impact of the proposed development.³

¹ The Second District was adopting the language of the New Jersey Supreme Court in 181, Inc. v. Salem County Planning Board, 333 A.2d 501 (Supre. Ct. Law Div.1975)

²See, Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309 (1994)

³See, Sarasota County v. Taylor Woodrow Homes Limited, 652 So.2d 1246 (Fla. 2nd DCA 1995); State of Florida Department of Transportation v. Heckman, 644 So.2d 527 (Fla. 4th DCA, 1994)

Conclusion

The application for a waiver of the additional 40 foot right of way dedication requirement on University Drive should be approved since, as a practical matter, the right of way is required for any contemplated improvement to University Drive and the County cannot meet the legal standards necessary to force the dedication of private property as a condition of the approval of a development permit.